

# **Immigration and Asylum Accreditation Scheme**

## **Guidance**

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## A. An introduction to the Accreditation Scheme

The Immigration and Asylum Accreditation Scheme (IAAS) covers all immigration and asylum advice and services work.

Membership is a mandatory requirement only for immigration practitioners who wish to carry out and receive payment under a Legal Aid Agency (LAA) contract in the immigration and asylum category, save for advocacy services from the independent Bar.

It is not compulsory for solicitors offering immigration and asylum advice and services on a privately funded basis; however, membership is encouraged as it is an independent objective mark of high standards and competency in the field.

Under section 84 of the Immigration and Asylum Act 1999 (IAA 1999), it is an offence for a person to provide immigration advice or services unless they are a “qualified person”. A qualified person includes a person who is:

- Regulated by the Office of Immigration Services Commissioner (OISC)
- a member of a Designated Professional Body (DPB) – for example, the Law Society
- working under the supervision of a member of a DPB
- regulated by an EEA-equivalent of a DPB
- working under the supervision of a member of an EEA-equivalent

OISC is responsible for the regulation of persons providing immigration advice and services who are not regulated by a Designated Professional Body (DPB) or work under the supervision of such a person or are otherwise authorised in terms of the IAA 1999.

Immigration practitioners must satisfy themselves that they comply with the requirements of the legislation. Whilst most individuals who are accredited must be qualified persons or employed by a qualified person, where an individual changes employment it is imperative that they ensure that all relevant legislative provisions are complied with as membership of the scheme will not in itself ensure that an individual is a qualified person

In 2004, the Law Society introduced the accreditation scheme for immigration and asylum practitioners. The eligibility criteria and terms and conditions of scheme membership are set out in this document.

The LAA require firms providing immigration and asylum services under a contract to have a Level 2 or Level 3 member of IAAS who also is a Supervisor member. An individual working under a contract **must** be a member of IAAS.

Work restrictions are applied by the LAA to the different levels of membership.

If you have any queries regarding the LAA contract, contractual requirements or work restrictions, please contact the LAA at [www.legalservices.gov.uk](http://www.legalservices.gov.uk)

## **B. Who is eligible to apply for membership**

You can apply if:

- You are a solicitor or FILEX and hold a practising certificate, normally free of conditions.
- You are a barrister in independent practice
- You are a non-solicitor employed in a solicitors firm or an organisation that is regulated by the Office of the Immigration Services Commissioner (OISC)

For non solicitor applicants, who are not chambers you must remain in such employment throughout the period of membership. Your application must be counter-signed by a partner or senior manager to confirm your current employment and your suitability for membership. This provision will apply to members of the Bar who are employed in a solicitor's firm or an organisation regulated by OISC

Persons undertaking voluntary work may be eligible to apply for membership but in such cases, membership will be limited to such conditions as are deemed appropriate by the Law Society with the intention of ensuring that the membership is restricted to voluntary work with a regulated organisation. Where an individual is a member by reason of their voluntary work, such membership may lapse or be treated as withdrawn if the individual ceases to be either employed or volunteering with an organisation which is regulated by the Law Society or the OISC.

## **C. What types of membership are available**

There are four different levels of membership

- Probationary
- Level 1 (accredited)
- Level 2 (senior)
- Level 3 (advanced), which the Law Society has now branded as Immigration Law Advanced, and can be found on our website.

There is also an additional Supervisor membership available only for Level 2 or Immigration Law Advanced members.

## **D. The level of experience you will be required to demonstrate**

There are two elements to attaining membership:

- Pass the competency standards
- Meet fitness and propriety standards

The competency standards are met by passing the assessments relevant to the level of membership you wish to attain.

The fitness and propriety standards are met by passing the vetting checks carried out by the Law Society.

Once the competency standards and fitness and propriety checks are satisfied, the Law Society will grant membership to the scheme.

### **E. How to apply and what you should include**

All applications for Law Society Accreditation Schemes are in two sections.

Section 1 - Individual's details and Organisation's details

Section 2 - Scheme specific application form.

You will be required to fully complete each section, and forward your completed application, with the relevant fee, to the Law Society.

### **F. How you will be assessed**

This depends on the level you wish to apply for.

To meet the competency standards for Probationary, Level 1, Level 2 and Supervisor, an applicant must pass the assessments relevant to that level.

The assessments are carried out by an external assessment organisation. Central Law Training ([www.clt.co.uk](http://www.clt.co.uk)) is the approved assessment organisation for IAAS.

The competency standards comprise of assessments for each level are as follows;

#### **Probationary:**

Multiple Choice Test (MCT) – conducted under examination conditions. Time allowed 1½ hours.

Probationary membership is a one-off membership that allows an immigration practitioner to carry out and receive payments under an LAA contract while they are in the process of attaining full membership. It is not mandatory to be a Probationary member before applying to Level 1 or Level 2. A person who has been accredited at level 1 or level 2 cannot apply at any stage thereafter for probationary membership

The work that can be undertaken by a Probationary member is limited under the LAA contract. Please contact the LAA for further details.

Applications can be made before or after you have passed the Multiple Choice Test (MCT).

You should not apply for Probationary membership if you cannot comply with the conditions of membership.

#### **Applications made before MCT**

If you have not passed the MCT when you apply for membership, it is a condition of membership that you pass the assessment and inform the Law Society within 3 months from the date your membership was registered. Please note that the CLT do not send the results to the Law Society.

Once the Law Society obtains your written confirmation that you passed the MCT, your membership will be extended to a maximum of 9 months from the date of registration. During this period, you must apply for membership at Level 1 or Level 2. Details about Level 1 and Level 2 memberships are described below.

### **Applications made after MCT**

If you have passed the MCT at the time of application, membership is granted for a maximum period of 12 months. During this period, it is a condition of membership that you must apply for membership at Level 1 or Level 2.

### **Failure to pass the MCT**

Failure to pass the relevant assessments **and informing** the Law Society within the timeframes will result in your membership terminating at the expiration date and you will lose your entitlement to work and receive payments under an LAA contract. You will not regain that entitlement until you have Level 1 or Level 2 membership.

Once your Probationary membership has expired, there is no further opportunity to re-apply as a Probationary member. It is a one-off membership. You are still eligible to apply for Level 1 or Level 2

Individuals are reminded that it is the evidence of the passing of the examination that will determine entitlement to membership, not the sitting of the exam even if ultimately successful. The completed examination results must be evidenced to demonstrate eligibility for or continuation of membership

### **Level 1: Each of**

- Written examination – 2 hour examination with 30 minutes reading time consisting of 3 compulsory questions on immigration law, asylum law and practice and EU law.
- Drafting assessment – 1½ hour examination with 30 minutes reading time testing drafting skills.
- Client interview – a live and recorded assessment lasting 15 minutes

From 1 June 2010, the assessments have an 18 months validity period. To apply for membership of IAAS, all assessments must be passed **and the application to IAAS made within an 18 month period without exception.**

Level 1 (accredited) membership is initially for a period of three years from the date of registration, after which members must renew their membership for further terms of five years each by re-accrediting.

To apply for Level 1 membership, you must pass the relevant assessments **before** applying to the Law Society.

### **Level 2: Each of**

- Written examination – 2½ hour examination with 30 minutes reading time consisting of 3 compulsory questions on immigration law, asylum law and practice and EU law and 1 question on either immigration law (non business) and practice, asylum law and practice or managed migration (business) law and practice.

- Drafting assessment – 2½ hour examination with 45 minutes reading time testing drafting skills.
- Client interview – a live and recorded assessment lasting 15 minutes

From 1 June 2010, the assessments have an 18 months validity period. To apply for membership of IAAS, all assessments must be passed **and the application to IAAS made within an 18 month period without exception.**

Level 2 (senior) membership is initially for a period of three years from the date of registration, after which members must renew their membership for further terms of five years each.

To apply for Level 2 membership, you must pass the requisite assessments before applying to the Law Society.

Please note that if you have applied for Level 2 membership migration (business) specialist and have chosen that specialist question in the examination, the LAA will not allow you to conduct work in general immigration or asylum under the contractual arrangements.

### **Supervisor:**

Timed Assessment – A skills test lasting 3 hours plus 45 minutes reading time.

Any supervisor membership runs concurrent to either Level 2 or Immigration Law Advanced membership. If your membership ceases, or you fail to re-accredit your Level 2 or Immigration Law Advanced membership, your supervisor membership will also cease.

You can apply for this membership if:

- You are already a Level 2 or Immigration Law Advanced member, and
- You have passed the Timed Assessment.

The LAA requires all firms holding a contract for immigration and asylum services to have at least one practitioner who is a Supervisor member.

### **Immigration law Advanced**

There is a separate assessment process for this level, which can be found on our website.

### **G. What other checks and assessments are made**

You must demonstrate that you are a fit and proper person to become an accreditation scheme member, and must continue to be so throughout your membership. The Law Society reserves the right during the currency of any voluntary scheme membership to investigate any matter which may call into question the fitness and propriety of any scheme member to act as such, and to take whatever action is considered appropriate at whatever stage of the investigation.

The Law Society will examine whether your past record reveals that you have committed any offences involving fraud or other dishonesty or violence.

The Law Society will also be concerned with any practice in which you may have engaged in the course of any business or employment which do not conform with the best standards of professional conduct. Evidence showing delays in dealing with cases, failure to answer correspondence and failures or delays in responding to enquiries from regulatory and revenue authorities will raise doubts as to your competence to remain a scheme member.

The assessment of fitness is not a mechanical exercise whereby compliance with a number of specific requirements ensures the grant of an authorisation. It is rather a judgement based on the review of your whole record and individual circumstances.

If the Law Society, with due regard to the rules of procedural fairness, determines that you have ceased to be a fit and proper person to continue to be a member of the scheme, or that the fitness or propriety to act as such has been compromised, it may refuse, revoke or suspend the membership or attach conditions to it. Members affected by a decision taken under this paragraph have a right to request a review in accordance with the procedures set out elsewhere in this document.

Where a complaint or other matter which may affect your suitability to remain on the scheme is considered to be of sufficient seriousness, the Law Society may suspend your membership pending the completion of the investigation and any proceedings as may arise.

For all applications, the Law Society carries out vetting checks against its database and, if considered necessary, will request vetting checks from other professional and regulatory bodies, for example, the Home Office, the Immigration Services Tribunal, the Bar Council or the OISC.

When applying for registration with the Law Society you must declare any matters that may affect your fitness and propriety to conduct immigration and asylum work; this will include, but is not limited to:

- criminal convictions, cautions and pending charges or investigations
- disciplinary findings by the Solicitors Disciplinary Tribunal, SRA adjudicator or any other regulatory body
- complaints found or pending with the Legal Ombudsman or any other regulatory body
- personal bankruptcy, voluntary arrangements and county court judgements
- actions taken by the Immigration Services Commissioner to refuse or withdraw regulation or exemption
- being subject to a direction made by the Immigration Services Tribunal.

If the Law Society considers it necessary to obtain vetting checks from other bodies you will be notified of which body is being approached and the reason.

Employing solicitors firm or OISC regulated organisations must additionally certify that any non solicitor employee applying for membership is a fit and proper person.

## **H. What fees are payable for making your application**

Please see the website for the most up to date fee schedule.

## **I. Information on re-accreditation**

Members of IAAS are required to apply for re-accreditation before the expiry of their membership, being three years from the date of initial registration.

We recommend that you start the process of re-accreditation well in advance of your membership period ending.

Successful re-accreditation will entitle the member to a further five-year period of membership. Thereafter you will need to renew your membership every five years.

Applications for re-accreditation have the same section 1 as all Law Society Accreditation Scheme applications, with a separate section 2 specific to reaccreditation for the scheme.

### **The re-accreditation exam**

The re-accreditation examination assesses the application of law and procedure as well as implication of recent case law.

Central Law Training (CLT) is the sole organisation approved by the Law Society to provide the assessments for re-accreditation to the scheme.

The assessment is a 2.5 hour written examination with 30 minutes reading time (total 3 hours). It consists of 3 compulsory scenario-based questions on asylum, immigration (including nationality) and EU Law with no optional or specialist questions.

The pass mark is 50%. Below this mark is a failure but candidates will have the opportunity to re-sit the assessment.

You may re-sit the re-accreditation assessment if you do not pass on the first attempt. Please note that you cannot re-sit the assessment if you fail for Gross Professional Error.

If you fail after the second attempt, you may apply to the Law Society in writing by email or by post to request the opportunity to take a third or subsequent assessment.

The Law Society will only grant such requests in exceptional circumstances which include, but not limited to, long-term illness or bereavement, and will deal with requests for a second re-sit on a case by case basis

Please contact CLT if you need to arrange a re-sit. If you are arranging a second re-sit, you will need a letter from the Law Society granting you access.

If you do not pass the re-sit(s), your application for re-accreditation will not be successful.

### **Gross Professional Error**

A gross professional error (GPE) is an error which, had it been made in relation to a client in a real life situation, might in the opinion of the Assessment Board have led to disciplinary action being taken by relevant regulatory authority against the individual or the partner(s)/solicitors within a firm.



Non-exhaustive examples of a GPE are as follows:

- misleading the court;
- assisting the client to commit a criminal offence e.g. advising the client to overstay;
- knowingly putting forward false information on behalf of the client;
- inventing evidence;
- continuing to act where there is a conflict of interests between clients or between the client and the firm;
- breaching client confidentiality.

If you fail the re-accreditation assessment as a result of Gross Professional Error, your membership will be terminated forthwith and you will not be eligible to take a re-sit unless you have the written permission of the Law Society. CLT will not allocate you a re-sit date unless you have formal written confirmation from the Law Society.

In order to obtain the permission of the Law Society, you will need to write to the Accreditation Unit, setting out the reasons why you should be given the opportunity to re-sit the assessment notwithstanding a Gross professional Error. Requests will be dealt with on a case by case basis.

The Law Society will review your request only once payment of the review fee is received in full, following which the Law Society may,

- deny your request and bar you from membership to the scheme for a period not exceeding two years
- allow you to re-sit the assessment
- deny the opportunity to re-sit but may allow you to undergo the initial assessment process at Level 1 - Require you to attend specific training to address the issue of the Gross Professional Error

### **Consequence of failed assessments**

If you fail to pass the re-accreditation assessment and/or do not pass the fitness and propriety checks, your membership will be terminated, including any Supervisor status.

If you wish to regain your membership, you will need to undergo the initial accreditation process as set out above.

You can take the initial accreditation assessments and make an application for membership at any time after your unsuccessful application for re-accreditation. You are not limited to applying for the same level of membership. For example, a Level 2 case worker who fails the re-accreditation process can undergo the Level 1 initial process.

If you were previously a Supervisor caseworker, you will be required to retake the Supervisor timed assessment and applying for membership. For the purposes of the LAA contract you will not be treated as being a supervisor until the retake is successfully completed. However you cannot be granted supervisor status unless you have current level 2/3 standard status

If you have any queries in relation to the assessment, including booking, fees and venues, please contact CLT.

## **J. Our requirements for continued professional development**

Members of the scheme will be expected to attend at least 6 hours per year of training courses or other approved continuing professional development (CPD) events to update your knowledge of immigration law and practice.

Your CPD training record covering the previous three years must be included when you apply for re-accreditation.

## **K. What standards of competence are expected of a member of the scheme**

The standards broadly set out the key knowledge and skills advisers should have at each level.

This has been substantially reduced largely to remove out of date material and ensure that the focus for both accreditation and re-accreditation is upon the issues that are likely to be encountered by practitioners rather than on specific knowledge of case law.

Our aim is to ensure that those who are accredited are able to deliver good quality advice in practical terms and the aim of the assessment is to require candidates for accreditation and re-accreditation to identify practical solutions to practical problems within the framework of regulated legal service

Knowledge and understanding of the following areas where necessary and to the appropriate level:

### **Asylum**

- Asylum processes and decision making
- Criteria for the grant of asylum and humanitarian protection
- Entitlements for support for persons with pending claims and those with positive decisions
- Appeal rights and limitations
- Main applicable statutory provisions, immigration rules, case law, concessions and policies

### **Immigration**

- Major provisions of immigration rules
- Impact of Human Rights Act on decision making including application of human rights to family applications
- Appeals rights and limitations from within and outside the UK
- Entry clearance procedures
- Main applicable statutory provisions, immigration rules, case law, concessions and policies

### **EU law**

- Scope of EU law including its applicability to EEA, third country nationals and UK nationals
- Relevant primary and secondary law including case law
- Relationship between EU and national law

- Range of and criteria for applications that may be made both from within and outside the UK including for permanent residence
- Entitlements of family members, including after death, separation, divorce, departure or cessation of activity of main EEA applicant
- Relationship between rights under EU law and access to services and benefits

### **Procedure**

- Knowledge of availability and limitations of legal aid
- Onward appeals beyond First Tier Tribunal
- Relevant Tribunal procedure rules
- Availability of remedies

### **Professional skills**

- Legal research skills including ability to locate, understand and apply primary materials correctly according to current legal principles
- Ability to identify and reconcile or prioritise different sources of law
- Ability to identify and apply concessions, guidance and policies according to current legal principles
- Fact-finding and interviewing techniques, particularly for vulnerable clients
- Advising clients accurately in writing and orally and in ways that the client can understand
- Drafting to include drafting to clients, third parties and tribunals
- Ability to carry out evaluation of merits of an application or appeal
- File management and client care

### **Ethical/diversity issues**

- Awareness of vulnerability or potential vulnerability of clients
- Understanding needs of clients and availability of solutions
- Understanding of potential criminal and ethical implications arising from particular circumstances